869.

SUPREME COURT OF THE UNITED STATES.

No. 86.

JAMES WILLIAMS, PLAINTIFF IN ERROR,

VS.

THE UNITED STATES, DEFENDANTS IN ERROR.

IN ERROR TO THE CIRCUIT COURT U. S. FOR WASHINGTON, D. C.

INDEX.

	Original.	Print.
Writ of error	1	3
Citation	2	3
Copy appeal bond	3	4
Style of court—Parties	5	4
Capias ad respondendum	6	5
Return of capias—Rule nar.	7	6
1836, March term—Continuance of cause	7	6
,, November term—Continuance of cause	8	6
1837, March term—Nar.	8	7
,, ,, Rule plea	10	8
,, ,, Plea of performance and oyer of bond	10	8
,, ,, Replication	12	9
,, ,, Agreement of counsel	24	15
,, ,, Rejoinder and issues	24	16
,, ,, Venire ordered	29	18
1837, Nov. term—Cause continued	29	18
1838, March and November term—Cause continued	30	18
1839, March term—Cause continued	30	19
1839, Nov. term—Jury empannelled and verdict	31	19
,, ,, Judgment on verdict	32	20
,, ,, First bill of exceptions	33	21
,, ,, Second bill of exceptions	34	22
,, ,, Statement of Asbury Dickins	35	23
,, ,, Statement of M'C. Young	36	23
,, ,, Writ of error filed	37	23
,, ,, Clerk's Certificate,	37	23

S. D. Langtree, Print.

805

Writ of Error.

UNITED STATES OF AMERICA, *sct.*

The President of the United States, to the Judges of the Circuit Court of the District of Columbia, for the County of Washington, greeting:

[L. S.] Because in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said court, before you, or some of you, between the United States, plaintiffs, and James Williams, defendant, a manifest error hath happened, to the great damage of the said James Williams, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of January next, in said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, which of right, and according to the laws and custom of the United States should be done.

Witness, the Hon. Roger B. Taney, Chief Judge of said Supreme Court.

Issued the 16th day of January, 1840.

W. BRENT, *Cl'k Circuit Court,*
Dist. of Columbia, County of Washington.

Citation.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to Francis S. Key, Esquire, Attorney of the United States, for the District of Columbia, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, on the second Monday of January next, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States, for the District of Columbia, in the County of Washington, wherein James Williams is plaintiff in error, and the United States are defendants in error, to

shew cause, if any there be, why judgment rendered against the said James Williams, in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in this behalf.

Witness, the Hon. W. Cranch, Chief Judge of the Circuit Court of the District of Columbia, this 16th day of January, 1840.

Service acknowledged.

Copy Appeal Bond.

Know all men by these presents, that we, James Williams, Alexander Williams and Thomas A. Hawke, are held, and firmly bound unto the United States of America, in the full and just sum of two hundred dollars, current money, to be paid to the said United States, their certain attorney or assigns, to which payment well and truly to be made and done, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents; sealed with our seals, and dated this 16th day of January, 1840.

Whereas, lately, at a Circuit Court of the District of Columbia, sitting for the County of Washington, in a suit pending in the said court, wherein the said United States were plaintiffs, and the said James Williams was defendant, judgment was rendered against the said James Williams; and he, having obtained a writ of error, and filed a copy thereof in the clerk's office of the said Circuit Court, to reverse the judgment in the aforesaid suit; and a citation, directed to the attorney of the United States, citing and admonishing him to be and appear at a Supreme Court, to be holden at Washington, on the second Monday of January next.

Now, the condition of the above obligation is such, that if the said James Williams shall prosecute his writ to effect, and answer all damages and costs if he fails to make his plea good, then the above obligation to be null and void, otherwise to be and remain in full force and virtue in law.

JAMES WILLIAMS, [L. S.]
ALEXANDER WILLIAMS, [L. S.]
THOS. A HAWKE. [L. S.]

Signed, sealed and delivered in presence of
ROBT. BALL.

Approved: W. CRANCH.

Copy—Test:

W. BRENT, *Clerk.*

Style of Court.

DISTRICT OF COLUMBIA, *to wit:*

At a Circiut Court of the District of Columbia, begun and held in

and for the County of Washington, at the City of Washington, on the fourth Monday of November, being the twenty-fifth day of the same month, in the year of our Lord one thousand eight hundred and thirty-nine, and of the independence of the United States the sixty-fourth.

Present, the Hon'ble William Cranch, Chief Judge; Buckner Thruston and James S. Morsell, Assistant Judges; Alexander Hunter, Esquire, Marshal; William Brent, Clerk.

In the Record of Proceedings of the same Court, among others, are the following, to wit:

Parties.

THE UNITED STATES OF AMERICA,
against
JAMES WILLIAMS.

Be it remembered, that heretofore, to wit, on the fourteenth day of October, in the year of our Lord one thousand eight hundred and thirty-five, the said United States, by Francis S. Key, Esq., their attorney, prosecuted and sued forth, out of the Circuit Court here, the United States writ of capias ad respondendum, directed to the Marshal of the District of Columbia, in the words and of the tenor following, to wit:

Writ.

"DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to the Marshal of the District of Columbia, greeting:

We command you, that you take James Williams, late of Washington County, if he shall be found within the County of Washington, in your said district, and him safely keep, so that you have his body before the Circuit Court of the District of Columbia, to be held for the county aforesaid, at the City of Washington, on the fourth Monday of November next, to answer unto the United States of America, in a plea that he render unto them the sum of twenty thousand dollars, current money, which he owes to, and unjustly detains from them, and so forth; hereof fail not, at your peril, and have you then and there this writ.

Witness, the Hon. William Cranch, Chief Judge of our said court, at the city of Washington, the sixth day of June, anno Domini one thousand eight hundred and thirty-five.

Issued the 14th day October, 1835.

KEY. W. BRENT, *Cl'k.*"

November Term, 1835.

At which said fourth Monday of November, in the year eighteen hundred and thirty-five, being the day of the return of the aforegoing writ, come into the Circuit Court here, the United States by their attorney aforesaid.

Return of Writ.

And the marshal of the district aforesaid, to whom the said aforegoing writ was in form aforesaid directed, makes return thereof to the court here, thereon endorsed:

"Cepi,

ALEXANDER HUNTER, *Marshal.*"

Rule Nar. and Imparlance.

And the said James Williams, being called, appears in court here, by Joseph H. Bradley, Esquire, his attorney; and thereupon, on motion of the said James Williams, by his attorney aforesaid, it is ruled by the court here, that the said United States declare against the said James Williams, in the plea aforesaid, or judgment by the court here will be rendered against them in default thereof; and the said United States, by their attorney aforesaid, pray leave of the court here to imparle until the fourth Monday of March next; and then to declare against the said James Williams, in the plea aforesaid, and to them it is granted; the same day is given to the said James Williams, also.

March Term, 1836—Appearance of Parties.

At which said fourth Monday of March, in the year of our Lord one thousand eight hundred and thirty-six, come again into the Circuit Court here, as well the said United States by their attorney aforesaid, as the said James Williams, by his attorney aforesaid.

Continuance.

And thereupon further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties, by their attornies aforesaid, and by order of the court here thereupon, is continued until the fourth Monday of November next.

Nov'r Term, 1836.

At which said fourth Monday of November, in the year of our Lord one thousand eight hundred and thirty-six, come again into the circuit here, as well the said United States, by their attorney aforesaid, as the said James Williams, by his attorney aforesaid.

Appearance of Parties and Continuance.

And thereupon, further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties, by their attornies aforesaid, and by order of the court here thereupon, is further continued until the fourth Monday of March next.

March Term, 1837—Appearance of Parties.

At which said fourth Monday of March, in the year of our Lord one thousand eight hundred and thirty-seven, come again into the Circuit Court here, as well the said United States, by their attorney aforesaid, as the said James Williams, by his attorney aforesaid; and thereupon, the said United States, by their attorney aforesaid, declare against the said James Williams, in the plea aforesaid, in form following, to wit:

Nar.

"DISTRICT OF COLUMBIA,
County of Washington, to wit:

James Williams, late of the county aforesaid, gentleman, was summoned to answer unto the United States of America, of a plea that he render unto the said United States the sum of twenty thousand dollars, current money, which he owes to, and unjustly detains from, the said United States; and thereupon the said United States, by F. S. Key, their attorney, complain: for that whereas, heretofore, to wit, on the seventh day of February, in the year of our Lord eighteen hundred and thirty-one, the said James Williams, at Washington County aforesaid, by his certain writing obligatory, sealed with his seal, and now shewn to the court here, (the date whereof is the day and year aforesaid,) acknowledged himself to be held and firmly bound to the said United States, in the said sum of twenty thousand dollars, to be paid to the said United States; and whereas, Henry Ashton, late of the county aforesaid, was, on the fourth day of February, in the year of our Lord eighteen hundred and thirty-one, by and with the advice and consent of the Senate of the said United States, appointed by the President of the said United States, Marshal of the said United States, for the District of Columbia; the said United States aver, that the condition of the aforesaid obligation was such, that if the said Henry Ashton did, or should, by himself or his deputies, well and faithfully perform and fulfil all the duties of the said office of marshal of the said District, in pursuance of, and according to the acts of Congress in such case made and provided, then the said obligation to be null and void, otherwise of full force and virtue in law. And the said United States, in fact, say that

the said Henry Ashton did not, by himself and his deputies, well and faithfully perform and fulfil all the duties of the said office of marshal of the said District, in pursuance of the acts of Congress in such case made and provided; whereby the said writing obligatory became forfeited, by reason whereof an action hath accrued to the said United States, to demand and have of the said James Williams, the said sum of money; nevertheless, the said James Williams, although often requested, hath not paid to the said United States the said sum of money, or any part thereof, but so to do hath wholly refused, and still doth refuse, to the damage of the said United States of the amount of twenty thousand dollars, and therefore they bring suit.

F. S. KEY, *for the United States.*"

JNO. DOE, }
RICH'D ROE, } Pledges, &c.

Rule—Plea.

Thereupon, on motion of the said United States, by their attorney aforesaid, it is ruled by the court here, that the said James Williams answer to the declaration aforesaid, of the said United States, in the plea aforesaid, or judgment will be rendered against him in default thereof.

Plea of Performance.

And the said James Williams, by his attorney aforesaid, comes and defends the force and injury, when, &c., and prays an hearing of the writing obligatory aforesaid, and also of the condition thereof, and they are read to him as follows, to wit:

Oyer of Bond.

"Know all men by these presents, that we, Henry Ashton, Henry C. Neale, James Williams, Joseph Watson, Benjamin H. Clements, Leonard Ashton, John Philip Steward, all of the District of Columbia, are held and firmly bound unto the United States of America, in the full and just sum of twenty thousand dollars, current money of the said United States, to be paid to the said United States, or their certain attorney; to which payment well and truly to be made and done, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated this seventh day of February, in the year of our Lord one thousand eight hundred and thirty-one.

Whereas, the above named Henry Ashton was, on the fourth day of this present month, by the President of the United States aforesaid, by and with the advice and consent of the Senate of the United States, appointed the marshal of the said United States for the District of Columbia aforesaid:

Now, the condition of this obligation is such, that if the said Henry Ashton do and shall by himself and his deputies, well and faithfully perform and fulfil all the duties of the said office of marshal of the said District of Columbia, in pursuance of, and according to the acts of Congress in such case made and provided, then this obligation to be null and void, otherwise of full force and virtue in law.

HENRY ASHTON, [L. S.]
HENRY C. NEALE, [L. S.]
JAMES WILLIAMS, [L. S.]
JOSEPH WATSON, [L. S.]
B. H. CLEMENTS, [L. S.]
JOHN PHILIP STEWART, [L. S.]
LEONARD ASHTON. [L. S.]"

Signed, sealed and delivered in presence of,
(as to Henry Ashton, Henry C. Neale & James Williams' signatures,)
THOMAS WHELAN, JR.;

(as to Joseph Watson's signature,)
EUGENE WATSON;

(as to B. H. Clements, as to the execution of Leonard Ashton,)
DANIEL SEVRIN;

(as to the execution of Jno. P. Stewart,)
JANE CECILIA ASHTON;

(as to all,)
C. H. W. WHARTON.

Which being read and heard, the said James Williams saith, that the said United States the action aforesaid thereof against him to have or maintain ought not, because he saith, that the said Henry Ashton, in the condition of the said writing obligatory mentioned, by himself and his deputies, did well and faithfully perform and fulfil all the duties of the said office of marshal of the said District, in pursuance of, and according to the acts of Congress in such case made and provided; and this he, the said James Williams, is ready to verify; wherefore, he prays judgment if the said United States ought to have or maintain their action aforesaid thereof, against him, the said James Williams, &c.

"And thereupon, the said United States, by their attorney aforesaid, filed in court here the following replication:

"Replication.

"And the said United States, as to the plea of the said defendant by him above pleaded, say, that the said United States, by reason thereof, ought not to be barred from having and maintaining their

aforesaid action thereof against him, the said defendant, because they say, that the said Henry Ashton remained and continued in the office of Marshal of the United States for the District of Columbia, as in the said condition of the said writing obligatory mentioned, for a long space of time after the making thereof, to wit, from the 4th day of March, A. D. 1831, until the 28th day of February, 1834.

And the said United States say, that in the circuit court of the District of Columbia, for Washington County, and by judgment thereof, the said United States recovered, against divers persons in divers suits, large sums of money, amounting in the whole, to wit, as well the sum of $1500, with interest from certain days till paid, as the sum of $200 costs. And the said United States also aver, that in the circuit court of the District aforesaid, for the counties of Washington and Alexandria, and by judgment thereof, the said United States recovered against divers persons in divers suits therein, a large sum of money, to wit, as well the sum of $2,523 33, the same being for fines adjudged by the said courts against divers persons for divers offences by them committed, as the sum of $858 57 costs, whereof the said persons are convict, as by the records and processes thereof, in the said court remaining, more fully appear.

And the said United States say further, that after the rendition of the judgments aforesaid, and the adjudgment of the fines aforesaid, and costs aforesaid, and before the impetration of the original writ in this cause, the said United States for the recovery of the debt and fines, and costs aforesaid, sued out of the said courts writs of execution against the goods and chattels, and against the persons of divers of the said defendants in the said causes above mentioned, to the said Henry Ashton, as marshal as aforesaid, directed, returnable to different terms of the said courts, to wit, to terms commencing between the said 4th day of March, A. D. 1831, and the 28th day of February, A. D. 1834, which said executions afterwards, and before the return day thereof, at the counties aforesaid, were delivered into the hands of the said Henry Ashton, (who was then and from thenceforth, until the 28th day of February, 1834, marshal of the said District, duly appointed, commissioned and qualified,) to be executed according to law; and although there were, when the said writs of fieri facias were placed in the hands of the said Henry Ashton, as marshal, as aforesaid, and afterwards, and before the return day thereof, divers goods and chattels of the said parties, against whom the said writs of fieri facias were sued out, then within the said counties of Alexandria and Washington, where the said judgments were respectively rendered, and the said fines respectively adjudged; which said goods and chattels could have been levied and sold by the said Henry Ashton, for a sum sufficient to satisfy the aforesaid judgments of the United States, wherein the said writs of fieri facias had been sued out

as aforesaid, and which had been placed in the hands of the said Henry Ashton for execution, as aforesaid; and although the said persons against whom writs of capias ad satisfaciendum were sued out, were then and afterwards, and before the return day thereof, within the said counties of Washington and Alexandria, where the said writs of capias ad satisfaciendum were respectively issued, and could have been apprehended by the said Henry; of all which the said Henry Ashton had notice, to wit, at the counties aforesaid, between the days when the said writs of capias ad satisfaciendum and fieri facias were issued, and the return days thereof respectively: by reason whereof, the said Henry Ashton could and might, and ought to have levied the moneys aforesaid, for the recovery of which writs of fieri facias had issued; and by reason whereof, the said Henry Ashton might and could, and ought to have taken into his custody, and held in confinement, the persons against whom writs of capias ad satisfaciendum had been sued out.

And the said United States aver, that the said persons, against whom writs of capias ad satisfaciendum were sued out, were able to pay, and would have paid the said sums for the recovery of which writs of capias ad satisfaciendum were sued out, if the said writs had been executed; yet the said Henry Ashton so being marshal, as aforesaid, and not regarding the duty of his office as such marshal, but contriving and intending to injure, prejudice and aggrieve the said United States in this behalf, and to deprive them of the said sums of money above mentioned, did not, and would not execute the said writs of execution, to wit, the said writs of fieri facias and capias ad satisfaciendum, as in the said writs directed; and would not, and dit not make return of the said executions to the said courts, as required by the mandate of the said writs, but wholly neglected and refused so to do; and therein failed and made default.

And the said United States aver, that the said judgments in favor of the said United States against the aforesaid persons, are still wholly due and unpaid.

By means whereof, the said United States have been and are greatly injured, and deprived of the means of obtaining the said several sums of money, to the damage of the said United States of $20,000, contrary to the form and effect of the said condition of the said writing obligatory, to wit, on the first day of June, A. D. 1834, at the county aforesaid; and this the said United States are ready to verify. Wherefore they pray judgment, and their debt and fines, and costs aforesaid, together with their damages by them sustained, by reason of the detention thereof, to be adjudged to them.

2nd Breach.

And for assigning a further breach of the condition of the said

writing obligatory, according to the form of the statute in such case made and provided, the said United States say, that in the circuit court of the United States, for the District of Columbia, for Washington and Alexandria Counties, and by the judgment thereof, the said United States recovered against divers persons a large sum of money, to wit: as well the sum of $2000, being for fines adjudged by the courts against divers persons for divers offences, as the sum of $2000 costs; whereof, the said persons are convict, as by the records and processes thereof, in the said courts remaining, more fully appear.

And the said United States further say, that after the rendition of the judgments, and after the adjudgment of the fines and costs aforesaid, and before the impetration of the capias ad respondendum in this cause, the said United States, for the recovery of the debts and fines, and costs aforesaid, by their attorney, prayed the said defendants in commitment, until the said fines and costs were paid; who were thereupon ordered by the said court for Washington County, to be committed to prison until the fines and costs were paid as aforesaid; whereupon, the said defendants, so ordered to be committed as aforesaid, were taken into the custody of the marshal aforesaid, by the marshal aforesaid.

And the said United States further aver, that the said Henry Ashton, afterwards, between the said 4th day of March, 1831, and 28th February, 1834, without the order of the said court for the said county, and without the consent or direction of the United States, did discharge from his custody the said persons so committed as aforesaid—whereby the fines and costs so adjudged to the United States as aforesaid, have been lost to the said United States, and are due still to the United States. By means whereof, they, the said United States, have been and are greatly injured, to the damage of the United States, in the sum of $20,000, contrary to the form and effect of the said condition of the said writing obligatory, to wit: on the first day of June, 1834, and this the said United States are ready to verify. Wherefore they pray judgment and their debt aforesaid, together with their damages by them sustained, by reason of the detention thereof, to be adjudged to them.

3rd Breach.

And for assigning a further breach of the said condition of the said writing obligatory, according to the form of the statute in such case made and provided, the said United States say, that in the Circuit Court of the District of Columbia, for Washington County, and by judgment thereof, the said United States recovered against divers persons in divers suits, a large sum of money, to wit: as well the sum of $2,000, being for fines adjudged by the said court against divers persons for certain offences by them committed, as the sum

of two thousand dollars, costs; whereof the said persons are convict, as by the records and processes thereof, in the said court remaining, more fully appear.

And the said United States further say, that after the judgment of the fines and costs aforesaid, and before the impetration of the writ of capias ad respondendum in this cause, the said United States, for the recovery of the debts and fines, and costs aforesaid, sued out of the said court writs of execution against the goods and chattles of certain of the said persons, against whom fines and costs had been adjudged as aforesaid; and also writs of execution against the person of certain of the said defendants, in the said causes above mentioned, to the said Henry, as marshal as aforesaid directed, returnable to different terms of said court, between the 4th day of March, A. D. 1831, and 28th February, 1834, which said executions afterwards, and before the return day thereof, at the counties aforesaid, where they were respectively issued, were delivered into the hands of the said Henry Ashton, who was then and from thenceforth, until the 28th day of February, 1834, marshal of the said District, duly appointed, commissioned and qualified, to be executed according to law. And the said Henry Ashton, by virtue of the said writs of fieri facias, afterwards, to wit: on divers days between the said 4th day of March, 1831, and the said 28th day of February, 1834, at the counties aforesaid, in which said writs of execution were respectively directed to be executed, before the return days of said writs of execution, received of and from the persons aforesaid, against whom the aforesaid fines and costs were awarded by the said courts, in favor of the United States, a large sum of money, to wit, as well the sum of $2,000, being in satisfaction of the said fines adjudged against the aforesaid persons, as $2,000, being in satisfaction of the aforesaid costs, together with the additional costs of said executions.

And the said United States aver, that the said Henry Ashton did afterwards wholly neglect and refuse to bring such sum of said money so by him received, by virtue of said writs of fieri facias, into court, according to the exigency of said writs of fiery facias, and to pay over to the said United States the said sum of money so by him collected, by virtue of said writs of fieri facias, as aforesaid. And the said United States aver, that the said Henry Ashton did afterwards, by virtue of said writs of capias ad satisfaciendum, apprehend and take into his custody the said persons against whom the said writs of capias ad satisfaciendum were issued, according to the mandate and requisition of the said writs, to wit, at the counties aforesaid, respectively, in which said writs were issued, and directed to be executed, to wit, on divers days between the 4th of March, 1831, and the said 24th of February, 1834; but that afterwards, to wit, on divers days, between the last mentioned days, he discharged the said persons out of his custody and possession, without the order of the said courts or either of them, and contrary to the order

in the said writs contained, and did knowingly and willingly permit the said persons to escape from out of his possession and custody, and did fail to keep in his custody the said persons, as he could and might, and ought to have done, and did therein fail and make default, to wit: on the days and years aforesaid, at the counties aforesaid, where the said writs of execution were respectively issued.

And the said United States aver, that the said judgments so rendered as aforesaid, and the fines and costs so adjudged to them, as aforesaid, are still wholly due and unpaid to them; by means whereof they have been and are greatly injured to the damage of $20,000, contrary to the form and effect of the said condition of the said writing obligatory, to wit, on the 1st day of June, 1834; and this they, the said United States, are ready to verify. Wherefore they pray judgment, and their debt aforesaid, together with their damages by them sustained by reason of the detention thereof, to be adjudged to them.

4th Breach.

And for assigning a further breach of the said condition of the said writing obligatory, according to the form of the statute in such case made and provided, the said United States say, that the said Henry Ashton, after the making and executing of the said writing obligatory, and before the impetration of the original writ in this cause, to wit, on the first day of October, in the year of our Lord eighteen hundred and thirty-three, as marshal of the United States, for the District of Columbia, as aforesaid, did receive out of the Treasury of the United States, from the Secretary of the Treasury of the United States, under the special direction of the President of the United States for the use and benefit of the United States, advanced to him as marshal as aforesaid, by said Secretary, by said direction of the President, to be appropriated in the service of the United States, and applied as required by law, by him, as such marshal as aforesaid, $6,455 16; which said sum of money, or any part thereof, the said Henry hath failed to appropriate and apply as he was required as aforesaid, and failed to account for, or pay to the said United States as according to the form and effect of the said condition he ought to have done. By means whereof, the said United States have been and are greatly injured, and have sustained damage to the amount of $20,000; and this the said United States are ready to verify; wherefore they pray judgment and their debt aforesaid, together with the damages by them sustained on occasion of the detention thereof, to be adjudged to them, &c.

5th Breach.

And for assigning a further breach of the said condition of the said writings obligatory, according to the form of the statute in such

case made and provided, the said United States say, that in the Circuit Court of the District of Columbia, for Washington County, and by judgment thereof, the said United States recovered against divers persons in divers suits a large sum of money, to wit, as well the sum of $1,500, being for fines adjudged by the said court against the said persons, for certain offences by them committed, as the sum of $800 costs. Whereof the said persons are convict, as by the records and processes thereof, in the said court remaining, more fully appear.

And the said United States further say, that after the adjudgment of the fines and costs aforesaid, and before the impetration of the writ of capias ad respondendum in this cause, the said court ordered the said persons, against whom fines and costs were adjudged as aforesaid, to be committed to prison until the fines and costs aforesaid were paid. Whereupon, the said defendants so ordered to be committed as aforesaid, were taken into the custody of the said Henry Ashton, as marshal as aforesaid; and the said United States further aver, that the said Henry Ashton afterwards, between the said 4th day of March, 1831, and the said 28th day of February, 1834, without the order of the said court, and without the consent and direction of the United States, did discharge from his custody and from prison, the said persons so committed as aforesaid; whereby the fines and costs so adjudged to the United States as aforesaid, have been lost to the said United States, and are still due to the United States. By means whereof, the said United States have been greatly injured, to the damage of the United States in the sum of $20,000, contrary to the form and effect of the said condition of the said writing obligatory, to wit, on the first day of June, 1834, and this the said United States are ready to verify. Wherefore they pray judgment and their debt aforesaid, together with their damages by them sustained by reason of the detention thereof, to be adjudged to them.

Agreement of Counsel.

First claim.—On the Treasury account for monies received by the marshal from the United Ssates, as advances made to him by the Secretary of the Treasury, under the special direction of the President of the United States.

Second claim.—For monies received on executions.

Third claim.—For monies he ought to have collected on executions from solvent persons, and neglected to do so.

The breaches to be assigned in form, to cover the above claims, as in the pleadings in the case of the United States, use of the Chesapeake and Ohio Canal Company, against Williams.

We agree to the above.

JOS. H. BRADLEY, *for Defendant.*
F. S. KEY, *U. S. Attorney.*

Rejoinder and Issues.

And the said James Williams saith, that by any thing in the first replication of the said United States to the plea of the said James, alleged, the said United States, the action aforesaid against him, to have or maintain ought not, because, protesting that the replication aforesaid, and the matter in the same contained, are altogether insufficient in law, and that he to that replication hath no need, nor by the law of the land is in any sort held to answer; for rejoinder, nevertheless, the said James saith, when the said writs of fieri facias were placed in the hands of the said Henry Ashton, in the condition of the said writing obligatory mentioned, as marshal aforesaid, nor afterwards, before the return day thereof, there was not any goods or chattles of which the said Henry had notice, of the said parties against whom the said writs of fieri facias were sued out, then within the said counties of Alexandria or Washington, where the said judgments were respectively rendered and the said fines respectively adjudged: nor were the said persons, to the knowledge of the said Henry Ashton, against whom writs of ca. sa. were sued out there, afterwards and before the return day thereof, within the said counties or either of them; and of this the said James doth put himself upon the country, &c.

And the said United States, in like manner, &c.

And the said James Williams, as to the replication of the said United States, second to the plea of the said James pleaded, protesting as aforesaid in the rejoinder, to the first replication above pleaded, yet the said James saith, that the said United States, notwithstanding any thing in the said replication alleged, ought not to have or maintain their action aforesaid thereof against him, because he saith, that the said Henry Ashton did not, between the 4th day of March, 1831, and the 28th February, 1834, without the order of said court, nor without the consent or direction of the said United States, discharge from his custody any person or persons ordered by the said court to be committed to prison, as the said replication stated and set out; and of this he puts himself upon the country, &c. And the said United States, in like manner, &c.

And the said James Williams, as to the replication of the said United States third to the above plea of the said James pleaded, protesting as aforesaid in his rejoinder to the said plaintiff's first replication; nevertheless for rejoinder, as to so much of the said replication as charges the said Henry Ashton with the receipt of monies on execution, saith, that the said United States ought not to have or maintain their said action thereof, against him, because he says, that the said Henry Ashton, in the condition of the said writing obligatory mentioned, did not collect and receive for the use of the said United States, the several sums of money in the said replication mentioned, or any or either of them, or any part thereof, in manner and form as the said United States, in their re-

plication above have alleged; and of this he puts himself upon the country, &c. And the said United States, in like manner, &c.

And as to so much of the said replication, as charges that the said Henry Ashton, in the condition of the said writing obligatory mentioned, discharged out of his custody and possession, without the order of the said courts or either of them, and contrary to the order in said writs contained, and did knowingly and willingly permit to escape from out of his custody and possession, and did fail to keep in his custody divers persons, against whom writs of capias ad satisfaciendum were issued, and who had been taken by virtue of said writs, the said James Williams by leave of court, &c., under like protestation, &c., saith, that he, the said Henry Ashton, took all due and possible care in his power to prevent the escape of the said persons so taken into his custody, *to prevent their escape;* and that notwithstanding such care, the said persons contriving with certain others, to this defendant unknown, unlawfully and by violence broke from, and contrived to escape out of the custody of the said Henry, and the said Henry thereupon did quickly, diligently and urgently pursue the said persons, and notwithstanding such fresh pursuit, the said persons escaped, and before the impetration of the original writ in this cause, to wit: on the day of 18 , fled and departed from the said District, into certain foreign parts, out of the reach of the process of this court, and have there, hitherto, continually remained; and the said James Williams avers, that the said escapes herein mentioned are the escapes in the said replication mentioned, and not other or different, all which the said James is ready to verify; whereupon he prays judgment, &c.

And the said United States, by their attorney aforesaid, say, that notwithstanding any thing above alleged, by the said James Williams, in rejoinder, the said United States ought not to be precluded from having and maintaining their action aforesaid, because, protesting that the said Henry Ashton did not take all due and possible care in his power to prevent the escape of the said persons so taken into his custody; nor did the said persons, contriving with certain others, to the defendant unknown, unlawfully and by violence break from, and contrive to escape out of the custody of the said Henry; but that he knowingly and willingly permitted them to escape; and protesting also, that the said Henry did not, immediately after such escape, make fresh pursuit in order to re-take the said persons; nor did *did* they, before they could be retaken, fly and depart from this District into foreign parts, out of the reach of the process of this court, and there, hitherto, have continually remained; and of this the said United States put themselves upon the country. And the said James Williams, in like manner, &c.

And the said James Williams, to the replication of the said United States, fourth to his said plea pleaded, saith, that by any thing pre-alleged, the said United States their action aforesaid against

him to have or maintain ought not, because, protesting that the replication aforesaid, and the matter in the same contained, are altogether insufficient in law, and that he to that replication hath no need, nor by the law of the land, is in any sort held to answer; for rejoinder, nevertheless, the said James saith, that the said Henry Ashton, in the condition of the writing obligatory mentioned, after the making and executing of the said writing obligatory, and before the impretration of the original writ in this cause, to wit: on the first day of October, 1833, or at any other time, did not as marshal of the United States, for the District of Columbia, receive out of the Treasury of the United States from the Secretary of the Treasury of the United States, under the *special direction* of the President of the United States, for the use and benefit of the United States, advanced to him as marshal as aforesaid, by the said Secretary, by said direction of said President, to be appropriated in the service of the United States, and applied as required by law, of him, as such marshal as aforesaid, $6,455 16, or any other sum; and of this he puts himself upon the country, &c.; and the said United States, in like manner, &c.

Venire ordered.

Therefore, let a Jury thereon appear before the court here on the fourth Monday of November next, by whom, &c., and who neither, &c., to recognize, &c., because as well, &c.; the same day is given to the said parties, then and there, &c.

Nov'r. term, 1837.

At which said fourth Monday of November, in the year eighteen hundred and thirty-seven, come again into the Circuit Court here, as well the said United States, by their attorney, aforesaid, as the said James Williams, by his attorney aforesaid.

Cause continued.

And thereupon, further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attornies aforesaid, and by order of the court here thereon, is continued until the fourth Monday of March next.

March term, 1838.

At which said fourth Monday of March, in the year eighteen hundred and thirty-eight, come again into the Circuit Court here, as well the said United States, by their attorney aforesaid, as the said James Williams, by his attorney aforesaid.

Cause continued.

And thereupon, further process of and upon the premises aforesaid, between the parties aforesaid, by the consent of said parties and their attornies aforesaid, and by order of the court here thereon, is further continued until the fourth Monday of November next.

Nov'r term, 1838.

At which said fourth Monday of November, in the year eighteen hundred and thirty-eight, come again into the Circuit Court here, as well the said United States, by their attorney aforesaid, as the said James Williams, by his attorney aforesaid.

Cause continued.

And thereupon, further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attornies aforesaid, and by order of the court here thereon, is further continued until the fourth Monday of March next.

March term, 1839.

At which said fourth Monday of March, in the year eighteen hundred and thirty-nine, come again into the Circuit Court here, as well the said United States, by their attorney aforesaid, as the said James Williams, by his attorney aforesaid.

Cause continued.

And thereupon, further process of and upon the premises aforesaid, between the parties aforesaid, by consent of the said parties and their attornies aforesaid, and by order of the court here thereon, is further continued until the fourth Monday of November next.

Nov'r term, 1839.

And now at this day, to wit, the said fourth Monday of November, in the year eighteen hundred and thirty-nine, come again into the Circuit Court here, as well the said United States, by their attorney aforesaid, as the said James Williams, by his attorney aforesaid. Whereupon, for trying the issues aforesaid, it is ordered by the court here, that twelve persons from the pannel of petit jurors, returned to the court here by the Marshal of the District aforesaid, be drawn by ballot; and thereupon the twelve persons so drawn, being called, come, to wit:

Jury empannelled.

1. Thomas Macgill,
2. Elexius Simms,
3. Vincent King,
4. Richard Brooke,
5. Robert K. Nevitt,
6. William Thompson,
7. James Middleton,
8. Joel Cruttenden,
9. Samuel Hanson,
10. Henry Haw,
11. William Hebb,
12. Robert S. Patterson.

Who, being empannelled and sworn to say the truth in the premises, upon their oath do say:

Verdict of Jury.

That the said Henry Ashton, by himself and his deputies, did not well and faithfully perform and fulfil all the duties of the said office of marshal of the said District, in pursuance of and according to the acts of Congress, in such case made and provided, as the said United States have alleged; and they find the sum of eight thousand two hundred and seventy-nine dollars and twenty-five cents, current money, with interest thereon from the 24th day of November, 1836, is really and justly due to the United States on the writing obligatory aforesaid.

Judgment on verdict.

Therefore, it is considered by court here, that the said United States recover against the said James Williams, as well the sum of twenty thousand dollars, current money, their debt aforesaid, to be released on the payment of the sum of eight thousand two hundred and seventy-nine dollars and twenty-five cents, current money, with interest from the 24th day of November, 1836, (by the jurors aforesaid, in form aforesaid assessed,) as also the sum of twenty thousand dollars, by the court here unto the said United States, on their assent adjudged, for their damages, which they have sustained, as well by occasion of the detention of the said debt, as for their costs and charges by them about their suit in this behalf laid out and expended; and the said James Williams, in mercy, and so forth.

Test: W. BRENT, *Clk.*

Memorandum.

Judgment rendered in this cause on the 11th day of January, 1840, for $20,000 debt, and $20,000 damages; debt and damages to be released on payment of $8,279 25, with interest from 24th Nov'r, 1836, till paid, and costs. Costs $45 51.

Test: W. BRENT, *Clk.*

Before the jurors, aforesaid, withdrew from the bar of the court here, the said James Williams, by his attorney aforesaid, filed in court here the following bills of exceptions, to wit:

Defendant's first Bill of Exceptions.

UNITED STATES, *vs.* JAMES WILLIAMS.

On the trial of this cause, the plaintiffs, to support the issues joined, on their part, offered to give in evidence the accounts settled between the United States and Henry Ashton, late marshal of the District of Columbia, upon whose official bond this action is brought against the defendant, as one of the sureties therein named. By these accounts it appears, that a balance appears due from the said Ashton to the United States, of $6,455 16. That in making up the said balance, various sums of money were, from time to time, during his continuance in office, advanced and paid to him, as marshal as aforesaid, out of the Treasury of the United States, by order of the Secretary of the Treasury, before the said Ashton, as marshal, had rendered accounts or vouchers, shewing that he had himself advanced and paid the same, or any part thereof, to those entitled by law to receive the same; and while balances for moneys previously advanced to him existed on the books of the Department, and before it had been shewn that the same had been properly applied and expended, and when the said sum of $6,455 16, was not in fact due from the United States for any services rendered or money expended.

(Copied in pages 35, 36.)

And the plaintiffs offered in evidence the statements of Asbury Dickins, formerly a clerk in the Treasury Department, and of M'Clintock Young, now chief clerk of said Department; which, reserving all objections to the competency of such testimony, it was agreed should be received as if said parties had been sworn in the case, and had testified in accordance with said statements. To the admissibility of all which testimony the defendant objects, but the court overruled the objection, and the defendant, by his counsel, excepts; and the said evidence being thus admitted to go to the jury, the counsel for the plaintiffs prayed the court to instruct the jury, that upon this evidence the plaintiff was entitled to recover the said sum of $6,445 16, against the defendant; and the court overruling the objection of the defendant, thereto gave said instruction, to which the defendant excepts; and the court, in pursuance of the statute, sign and seal this bill of exceptions to all the matters so ruled, as aforesaid, this 11th day of January, 1840.

W. CRANCH, [L. S.]
B. THRUSTON, [L. S.]
JAMES S. MORSELL. [L. S.]

Second Bill of Exceptions.

In the further trial of this cause, the plaintiffs produced the dockets and records of this court, shewing that in a number of cases where judgment had been entered against defendants for common law fines, forfeitures, and costs, adjudged against the said defendants, and the said defendants had paid the said amounts, so respectively adjudged against them, to the marshal, and entries were thereupon made by the said marshal or his deputy, on the dockets of said courts, "money made and ready," "money paid," and that the amounts so received by said marshal amounted to the sum of

And the plaintiffs further proved by the dockets, records, &c., as aforesaid, that certain sums of money were adjudged by the court aforesaid, against certain defendants, for common law fines, forfeitures, and costs, upon which writs of ca. sa. were issued, which writs were rendered by the marshal, "satisfied marshal," and shewed that the said sums so received by said Ashton, amounted to

And the defendant objected to the said several amounts as being recoverable in this action against the said defendant, and prayed the court to instruct the jury that he was not liable therefor; but the court refused so to instruct the jury, and instructed them that the defendant was liable for the amounts so received by said Ashton.

To which refusal the defendant, by his counsel, excepts, and prays the court to sign and seal this bill of exceptions, which is done accordingly, this 11th day of January, 1840.

W. CRANCH, [L. S.]
JAMES S. MORSELL. [L. S.]

Statement of Asbury Dickins, referred to in exceptions, at page 33.

Washington, January 11, 1840.

Dear Sir:

In compliance with your request, I now state, as I mentioned to you verbally, some time ago, that it is within my recollection that soon after the passing of the "act (of the 31st of January, 1823,) concerning the disbursement of public money," the Secretary of the Treasury was specially authorized and directed in writing, by the President of the United States, to make such advances of money, from time to time, to various classes of the disbursing officers of the Government, and among others to the marshals of the U. States, as should be found necessary, to the faithful and prompt discharge of their respective duties, and to the fulfilment of the public engagements. The papers containing these direc-

tions of the President were, as I believe, destroyed in the late burning of the Treasury building.

I am, dear sir, sincerely yours,

ASBURY DICKINS.

To FRANCIS S. KEY, Esq., &c. &c. &c.

Statement of M'C. Young, referred to in exceptions, at page 33.

DEAR SIR:

In reply to your inquiry, I have to state, that *all* advances to marshals U. S. are made by the Secretary of the Treasury, and not by direction of the accounting officers.

Yours resp'y,

M'C. YOUNG.

11 Jan'y, 1840.

F. S. KEY, Esq.

Test: W. BRENT, *Clk.*

Writ of Error filed.

And whereas, afterwards, to wit, on the 16th day of January, in the year 1840, the said James Williams, by his attorney aforesaid, produced and filed in court here, the United States writ for the correcting of errors of and upon the judgment aforesaid, directed to the Judges of the Circuit Court of the District of Columbia, in the county of Washington; and in pursuance thereof, and according to the form and effect of the law, in such case made and provided, a transcript of the record of proceedings of the judgment aforesaid, and all things thereunto relating, with the writ of error aforesaid, and a copy of the appeal bond hereunto annexed, is hereby transmitted to the said Supreme Court, accordingly.

Clerk's Certificate.

In testimony whereof, I hereunto subscribe my name, and [L. S.] affix the seal of the said Circuit Court, at the city of Washington, this 12th day of Jan'y, 1842.

W. BRENT, *Clk.*

Filed 14th January, 1842.